



REPORTING AND WITHHOLDING ON PAYMENTS TO FOREIGN PERSONS

IRS Nationwide
2007
Tax
FORUM
Partners in Tax
Administration

IRS Nationwide Tax Forum 2007

Withholding Requirements (Sections 1441/1442)

- Withholding of 30% on gross income required
- Reduced rate, including exemption from tax, may apply

Foreign Persons

- Nonresident Alien Individual
- Foreign corporation, Foreign Partnership
- Foreign Trusts & Foreign Estates
- Any other person that is not a U.S. person

Income Subject to Withholding

U.S. Source income that is:

- Fixed or determinable annual or periodical (FDAP) income, or
- All U.S. source gross income includible in income under Sections 61 and 871 of the IRC

Income Sourcing Rules

- Personal services Where performed
- Dividends U.S. / For. Corp.
- Interest Residence/payer
- Rents Location of prop.

Withholding Agent

- Withholding Agent - control, receipt, custody, disposal, or payment of any item of income to a foreign person
- May be individual, corporation, partnership, trust, association, or any other entity (Sections 1.1441-7(a); 1.1465-1(a)(1)).

Withholding Agents

- General Responsibilities of a U.S. Withholding Agent
 - Withholding
 - Determine appropriate withholding tax amount based on the documented status of the beneficial owner of the payment and eligibility for treaty provisions.
 - Withhold and remit to IRS per deposit requirements.

Withholding Agents

- General Responsibilities of a U.S. Withholding Agent (cont'd)
 - Reporting
 - Furnish a *Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding* to the payee and file a copy with the IRS.
 - Form 1042-S should indicate the amount of income earned, the amount of tax withheld and information identifying the withholding agent and the payee.
 - File *Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons* to report all income and withholding amounts reported on all Forms 1042-S and amounts deposited during the year.

IRS Nationwide

2007

**Tax
FORUM**

Partners in Tax
Administration

Documentation

Form W-8BEN

Part I: Claim of beneficial ownership of income as a non-resident of the U.S.

Part II: Establishes a claim of tax treaty benefits.

Form 8233

Part I: Establishes a claim of beneficial ownership of income as a NRA individual receiving compensation for personal services.

Part II: Establishes a claim of tax treaty withholding exemption and/or personal daily exemption.

IRS Nationwide

2007

**Tax
FORUM**

Partners in Tax
Administration

Penalties

- Failure to file 1042 IRC Section 6651
- Failure to pay IRC Section 6651
- Failure to deposit IRC Section 6656
- Failure to furnish information returns
 IRC Sections 6721 -6723
- Negligence IRC Section 6662

Where To Get More Information

- Treasury Regulation 1.1441
- IRS Publications 515 & 519
- Instructions for Forms 1042/1042-S
- Instructions for Requester of Forms W-8
- Instructions for Form 8233
- All can be found at www.irs.gov

IRS Nationwide
2007
**Tax
FORUM**
Partners in Tax
Administration

Points of Contact

Lowell Hancock – Program Analyst/RA,

Lowell.G.Hancock@irs.gov,

Tel. 330-253-7357 – College &
Universities, Sec. 1441

Tom Logan – Senior Program Analyst/RA,

Thomas.L.Logan@irs.gov,

Tel. 202-435-5113 FIRPTA, Partnership
W/H, Sec. 1441

IRS Nationwide
2007
Tax
FORUM
Partners in Tax
Administration